

**ARKANSAS COURT OF APPEALS**DIVISION IV  
No. CACR 08-422

WILLIAM HICKMAN

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** OCTOBER 1, 2008APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT,  
FOURTH DIVISION, [NO. CR 05-972]HONORABLE JOHN W. LANGSTON,  
JUDGE

AFFIRMED

**JOHN B. ROBBINS, Judge**

Appellant William Hickman was convicted of possession of cocaine with intent to deliver and possession of marijuana, after a bench trial in Pulaski County Circuit Court. On appeal, appellant argues that the convictions are not supported by sufficient evidence. Appellant failed to preserve the sufficiency issue for review. Therefore, we affirm without reaching the merits of his arguments.

In this case, appellant was the sole occupant and driver of a car that was pulled over for an outstanding warrant. In the search incident to arrest, the officer found in plain view in the front-passenger seat a black Nike-brand jacket. In the jacket, two bags of cocaine (totaling 8.6878 grams) and one bag of marijuana (7.5 grams) were found. At trial, appellant denied that the coat was his or that he had any knowledge that the coat contained contraband. Also at trial, appellant called Marcus Walton to the stand, who admitted that appellant gave

him a ride that day, that he left the jacket in the car, and that the drugs belonged to him. The State tried the case on the theory of constructive possession. At the conclusion of all the evidence, the judge asked for “statements of counsel.” Thereupon, the prosecutor argued why the evidence was compelling that appellant had constructive possession of the drugs. Then, defense counsel argued why there was reasonable doubt as to appellant’s guilt and requested that the trial judge find his client not guilty. The judge took a recess, and upon reconvening court, found appellant guilty. This appeal followed.

A motion for dismissal at a bench trial is the means by which one challenges the sufficiency of the evidence to sustain a conviction. *See* Ark. R. Crim. P. 33.1(b) (2008). Appellant failed to preserve any consideration of the sufficiency of the evidence by failing to move for dismissal at the close of all the evidence, as required by Ark. R. Crim. P. 33.1(b) and (c). Our supreme court has held that closing argument is no substitute for a motion for dismissal in a bench trial. *See State v. Holmes*, 347 Ark. 689, 66 S.W.3d 640 (2002). Rule 33.1 is strictly construed. *Etoch v. State*, 343 Ark. 361, 37 S.W.3d 186 (2001). This rule and its application were reaffirmed in *McClina v. State*, 354 Ark. 384, 123 S.W.3d 883 (2003).

We hold that appellant failed to comply with the requirements of Rule 33.1. Therefore, we will not address the merits of appellant’s sufficiency argument.

Affirmed.

GLADWIN and BIRD, JJ., agree.